

**The Michigan Tax Tribunal Act Aligned with
Standards of Accepted Valuation Practice and Principals**

Testimony to the House Tax Policy Committee May 4, 2016

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Thank you Mr. Chair and committee members, I am Mark Perry, President of Perry & Co. Thank you for the opportunity to be here today.

My testimony is intended to point out possibly 2 or more amendments contained in HB 5578 that may lead to unintended consequences creating uniformity problems inconsistent with Article IX, Section 3 of the Michigan Constitution. In summary, the Constitution mandates that the legislature shall provide for: 1) the uniform general ad valorem taxation of property not exempt by law; 2) the determination of true cash value of such property; 3) and the proportion of true cash value at which such property shall be uniformly assessed, which shall not . . . exceed 50 percent.

When annually making the assessment of property, the assessor must rely on the statutory definition and decades old interpretations of true cash value as determined by the courts. New Section 38 in HB 5578 defines true cash value to mean that term as defined in Section 27 of the General Property Tax Act ("GPTA").

New Section 38 in the Tax Tribunal Act also requires the tribunal make its independent determination of true cash value based on statutorily prescribed set of independent appraisal fact verification criteria that the assessor may not already undertake when making the original assessment under the GPTA. Assessors often times use mass appraisal techniques more reliant on 1 of 3 approaches to value that might not be aligned with the prescribed independent determination criteria imposed on the tribunal possibly leading to 2 different indicators of value. Simply, the assessor's original assessment is made consistent with the statutory definition of true cash value under the GPTA and the tribunal's determination will be based on

the definition of true cash value found in the GPTA and further adjusted subject to the independent determination criteria in the Tax Tribunal Act not found in the GPTA. The unintended consequence possibly creates valuation uniformity differences.

The second potential unintended consequence also linked to the new independent determination criteria imposed upon the tribunal, may also create potential independent determination of value uniformity differences between the property classes. New Section 3(c) of the Tax Tribunal Act defines the Entire Tribunal as the hearing division of the tribunal created to hear property cases excluding residential property and small claims assessment appeals. The independent determination criteria found in new Section 38 only applies to properties the Entire Tribunal has jurisdiction which is principally commercial and industrial property. For example, the new independent determination criteria imposed on the Entire Tribunal excludes sales and rental comparables subject to economic conditions and deed restrictions among others (with some exceptions), and does not mandate similar exclusions on property valuation cases tried in the residential and small claims division. Such permissive valuation evidentiary exclusions in one tribunal division and not the whole tribunal will create valuation uniformity differences.

Two other sections in HB 5578 that should be given further consideration includes Section 38(1)(f)(i)(a) and 38(2)(a). New Section 38(1)(f)(i)(a) mandates that the tribunal “use, weigh, and reconcile” the method of valuation used by the assessor. As written, it is presumed the method of valuation means the assessor’s original appraisal under appeal.

Because tribunal proceedings are de novo in nature, the tribunal has a duty to make an independent determination of true cash value. Even when a petitioner fails to prove by the greater weight of the evidence that the challenged assessment is wrong, the tribunal may not automatically accept the valuation on the tax rolls.¹ Regardless of the method employed, the

¹ Great Lakes Div of Nat’l Steel Corp, 227 Mich App [379, 409; 576 NW2d 667 (1998)].

tribunal has the overall duty to determine the most accurate valuation under the individual circumstances of the case.²

The other point of concern found in new Section 38(2)(a), the tribunal may consider the parties' stipulations only if the stipulated valuation settlement comports with the evidentiary basis required for an independent tribunal determination under new Section 38(1). Simply, if either or both the parties have not supplied ample appraisal evidence satisfying Section 38(1), it is possible this new provision will drive up the cost of the appeal and settlement for one or both parties. It has been said in the workgroup meetings that many assessment jurisdictions operate under limited resources and are unable to afford the cost of complex property valuation litigation; rejection of a stipulation because 1 or both parties can't afford an expensive appraisal and legal defense may put the local assessing jurisdiction at even greater disadvantage.

I am hopeful my testimony has provided you with useful information to consider as you continue debating commercial and industrial appraisal valuation methodology and now the Tax Tribunal Act.

I will be happy to take questions at this time.

² Meadowlanes Ltd Dividend Housing Ass'n v City of Holland, 437 Mich 473, 485-486, 502; 473 NW2d 636 (1991). [Id.]

